IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 57 OF 1991.

Shri Manohar Naik,
Supervisor, Fr. Agnelo High
School, Pilar, r/o H. No.
10/1, Zoriche Bhat, P.O. Goa
Velha. ... Petitioner.

Versus

1. Fr. Thomas Gonsalves,
   Headmaster, Fr. Agnelo High
   School, Pilar.
2. Xaverian Educational Society,
   by its President, Fr. Galdino
   Monteiro, SFX, Pilar.
3. The Director of Education,
   Government of Goa, Panaji.
4. State of Goa, by its Chief
   Secretary, Secretariat, Panaji. ... Respondents.

Mr. M.S. Sonak with Mr. D. Pangam, Advocates for the Petitioner.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. J. Godinho, Advocate for the Respondents 1 and 2.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.R. Bharne, Government Advocate for the Respondents 3 and 4.

Coram : A.M. KHANWILKAR AND
P.V. HARDAS, JJ.

DATE : 10TH FEBRUARY, 2004.

J U D G M E N T (PER HARDAS, J.)

This petition was allowed and rule was made absolute, by Judgment of the Division Bench of this Court, dated 20th /21st March 2001. The matter was then carried to the Apex Court and the Apex Court by its Order, dated 1st April 2003, remitted this petition for fresh consideration, in view of the Judgement of the Constitution Bench of the Supreme Court in **T.M.A. Pai**

Foundation and Others etc. v. State of Karnataka and others etc., decided by the Supreme Court on 31st October 2002. While remitting this petition for reconsideration, liberty was granted to the parties to the petition to file fresh pleadings. However, the parties to the petition have not filed any fresh pleadings.

2. In view of the directions of the Apex Court, the petition is heard afresh. This petition, under Articles 226 and 227 of the Constitution of India, seeks for an issuance of writ of mandamus or any other appropriate writ, order or direction commanding the respondents 3 and 4 to recognize the appointment of the first respondent and/or withdraw the recognition given to the first respondent as Headmaster of the school run by the second respondent. The petition also seeks for issuance of a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction commanding respondents 2, 3 and 4 to make appointment to the post of Headmaster to the Father Agnel High School, Pilar, Goa, from amongst the eligible senior most assistant teachers.

3. The facts, as are necessary for the decision of this petition, are stated hereunder:-

The second respondent is a Society registered under the Societies Act and established by the Society of the Missionaries of St. Francis Xavier, namely, Society of Pilar, Goa. The Society of the Missionaries of St. Francis Xavier of Pilar is a Society formed by the congregation of Priests and brothers belonging to the Catholic Church with its mother house at Pilar, Goa. It is a Society established and administered by the Members of the congregation of Priests and brothers of the Society of St. Francis Xavier, the Members of the Society, from its inception, have been the Priests and brothers belonging to the said congregation of St. Francis Xavier. The respondent no. 2 Society, is running six High Schools in the State of Goa, namely, (1) Guardian Angel High School at Sanvordem, (2) Father Agnel High School, (3) Immaculate Conception School, Dabul, (4) Miracles High School, Sanguem, (5) Piety High School, Collem and (6) Fatima High School, Rivona.

4. The petitioner herein was appointed as an Assistant Teacher, on 1st December 1972, in the Father Agnelo High School, Pilar, Goa, hereinafter referred to as 'the School', for the sake of brevity. The petitioner acquired B.Ed. qualification in 1978. The petitioner, at present, is working as Supervisor in the School, having been appointed to the said post, being the senior most eligible teacher, by letter, dated 5th

August 1987. The challenge to the appointment of the petitioner to the post of Supervisor, at the behest of one Dominic Araujo, did not succeed as the Division Bench of this Court dismissed Writ Petition No. 252 of 1987, by its Judgment, dated 27th January 1989. However, during the pendency of the said Writ Petition, the post of Headmaster in the School fell vacant on account of promotion of Father Filomen D'Costa and the respondent filled the said vacancy in the beginning of January 1989 by appointing the first respondent as the Headmaster of the School. The petitioner avers that the first respondent was not a teacher employed in the School, but, came to be appointed by transferring respondent no. 1 from the School run by respondent no. 2 at Ambarnath in the State of Maharashtra. The petitioner, by filing various representations remonstrated the appointment of the first respondent and in particular contended breach of the provisions of Rule 86 of the Goa School Education Rules, 1986, in the appointment of the first respondent. The petitioner had also sought the intervention of respondents 3 and 4 by requesting them not to uphold the appointment of the first respondent to the post of Headmaster. Since there was no favourable response to the entreaties of the petitioner, the present petition came to be filed. The principal challenge to the appointment of the first respondent to the post of Headmaster is that the

appointment has been made in breach of Rule 86.

5. Rule 86 of the Goa School Education Rules, 1986 reads as under:-

> "86. **Filling of vacancies:**-- (1) Notwithstanding anything contained in Rule 78, every vacancy in an aided school shall be filled up by promotion failing which by direct recruitment, in accordance with such rules as may be framed by the Director of Education in this behalf and notified/circulated separately.
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> ["Provided that the claim of any employee already working under the said Management in the Under graduate category possessing the requisite qualifications for the direct recruit shall be given due consideration while filling up the post with direct recruitment."]
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> (2) The vacancy of Principal, Higher Secondary School/Primary Training Institutes, Headmasters of Secondary School and Middle Schools, and the Asstt. Headmasters of Secondary Schools shall be filled up by promotion subject to the eligibility conditions prescribed in Rule 78. While filling up of these posts, the managements shall first explore the possibility of selecting the senior most teacher from the next below category indicated in column 5 of Table under Rule 78. While making such selection the management shall also give very careful consideration and shall select the best qualified and most competent person among those available for selection/appointment to the post. Seniority shall be the first criteria subject to fitness and merit. If the claim of a senior eligible teacher is by-passed, the reason for the same in writing will have to be recorded in the minutes by the promotion committee. The claim of

the senior qualified teacher shall not be by-passed arbitrarily without tangible reasons.

Explanation:- Common managements running the secondary schools as well as Higher Secondary schools, shall consider the claims of the Headmasters of Secondary schools in the order of inter se seniority for the promotion to the post of Principal of Higher Secondary Schools subject to eligibility conditions prescribed in Rule 78.

(3) The management shall make appointment of Heads only on probation for a year in the first instance and communicate full particulars with their biodata to the Director of Education for his approval. No Head of the school shall be confirmed without the prior approval of the Director of Education.

(4) Every vacancy which is to be filled up by direct recruitment shall be notified to the Employment Exchange or in the local newspapers as the case may be as per the rules applicable to Government Offices while recruiting the corresponding posts in Government schools. However the harness cases shall be regulated as per the rules applicable to Government offices and the Director of Education shall be the controlling authority."

6. The Goa School Education Rules 1986 have been framed in pursuance to the powers conferred under Section 29 of the Goa School Education Act, 1984. Section 29 confers the power to make Rules to provide for the purpose enumerated in Sub-Section (2)(a) to (y). Sub-Section (2)(g) of Section 29 of the Act provides for framing rules prescribing "the minimum qualifications, for and method of recruitment and the terms and conditions of service of employees".

7. Chapter VIII, containing Rules 74 to 98, deals with "Recruitment and terms and conditions of service of the employees of the private schools other than unaided minority schools". This title has been amended in 1994 to read "Recruitment and terms and conditions of service of the employees of the private schools". Rule 74 deals with the procedure for recruitment/promotion of employees in each recognised private school aided or unaided. Rule 75 deals with the power of the Director of Education to relax any essential qualification for the recruitment of any employee in a private school. Rule 76 deals with the appointing authority for the employees of the private school. Rule 77 prohibits a recognised school from appointing any employee, who has been dismissed from service by another recognised or Government school, without the previous approval of the Director. Rule 78 prescribes the qualification in respect of employees, both, for direct recruitment as well as by promotion. Rule 86 deals with filling of the vacancies. It is this Rule 86 with which we are concerned in the present petition.

8. Rule 86(1) mandates that every vacancy in an aided school shall be filled up by promotion, failing which, by direct recruitment. Sub-Rule (2) of Rule 86 states that the vacancy of Principal, Higher Secondary School/Primary Training Institutes, Headmasters of

Secondary Schools and Middle Schools and the Assistant Headmasters of Secondary Schools shall be filled up by promotion subject to the eligibility conditions prescribed in Rule 78 and, while so filling up these posts, the managements shall first explore the possibility of selecting the senior most teacher from the next below category indicated in column 5 of Table under Rule 78. The Rule further requires the management to select the best qualified and most competent person from amongst those available. It further provides that seniority shall be the first criteria subject to fitness and merit and, if the claim of a senior eligible teacher is by-passed, the reason for the same should be recorded in the minutes by the promotion committee. This Rule further directs that the claim of the senior qualified teacher shall not be by-passed arbitrarily without tangible reasons.

9. Mr. Sonak, the learned counsel appearing on behalf of the petitioner, has stated that the respondent no. 2 has appointed respondent no. 1 as the Headmaster of the School in clear breach of Rule 86(2), without considering the claim of the petitioner. It is also urged before us that the respondent no. 1 has been transferred from a school, no doubt managed by respondent no. 2, outside the State of Goa.

10. Mr. Coelho Pereira, the learned senior counsel appearing on behalf of the respondents 1 and 2, has urged before us that the respondent no. 1 was undisputedly eligible in terms of qualifications as prescribed under Rule 78. He has further urged that Rule 86 makes an inroad in the well recognised right of the minority institution to run and administer the institution of its choice. Therefore, according to the learned senior counsel for respondents 1 and 2, the management was within its right in appointing respondent no. 1 to the post of Headmaster.

11. Mr. Nadkarni, the learned Advocate General appearing on behalf of the respondent/State, has urged before us that the respondents 1 and 2 have not raised any challenge regarding the validity of Rule 86 in its application to the minority institutions. Despite the liberty given by the Apex Court in its Order, dated 1st April 2003, the respondents 1 and 2 have not filed any fresh pleadings challenging the applicability of Rule 86. It is also urged that the affidavit of respondents 1 and 2 is silent regarding the details of the approval granted by the Government to the appointment of the first respondent. It is also urged before us that the right of the Management to administer the minority institution is protected and Rule 86 does not interfere in the exercise of the said right. Rule 86 only

prescribes the method of recruitment and does not state or does not mandate that only the senior most teacher should be appointed. In fact, according to the learned Advocate General, if the management was to make appointments in breach of Rule 86, the process of appointment would amount to mal-administration.

12. The Apex Court in **The Ahmedabad St. Xaviers College Society and another etc. v. State of Gujarat and another**, A.I.R. 1974 S.C. 1389, which is relied by Mr. Pereira, the learned senior counsel for the respondents 1 and 2, has held that:-

> " Affiliation is regulating the educational character and content of the minority institutions. These regulations are not only reasonable in the interest of general secular education but also conducive to the improvement in the stature and strength of the minority institutions. Therefore, measures which will regulate the courses of study, the qualifications and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Article 30."

13. The Apex Court has further held in paragraph 19 as under:-

> "19. ... The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons selected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution."

14. The Apex Court in **Frank Anthony Public School Employees' Association v. Union of India and others,** A.I.R. 1987 S.C. 311 has held as under:-

> " If the educational institutions run by the linguistic or religious minorities are recognised by the concerned Government authorities, they are governed by the regulatory measures framed by such authorities, whether such recognised schools are aided or unaided. The regulatory measures in terms of the service conditions of its employees including the teaching staff are binding on such institutions and they are aimed at maintaining higher educational standards and to ensure that the employees are treated fairly, properly and their service conditions are governed by a set of rules which meet the statutory requirements."

15. The Constitutional Bench of the Supreme Court

in **T.M.A. Pai Foundation and others v. State of Karnataka and others,** (2002) 8 S.C.C. 481 has held in paragraphs 107 and 136 thus:-

> "107. The aforesaid decision does indicate that the right under Article 30(1) is not so absolute as to prevent the Government from making any regulation whatsoever. As already noted hereinabove, in **Sidhajbhai Sabhai** case it was laid down that regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. If this is so, it is difficult to appreciate how the Government can be prevented from framing regulations that are in the national interest, as it seems to be indicated in the passage quoted hereinabove. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law.
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> 136. Decisions of this Court have held that the right to administer does not include the right to maladminister. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been

held to be applicable to the minority institutions also -- for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality."

16. The Apex Court while answering question no. 5(c) has held, at page 589, thus:-

> Q.5(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?
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> A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.
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> For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such

tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee."

17. The Apex Court in the Judgment of **Islamic Academy of Education and another v. State of Karnataka and others,** 2003 (6) S.C.C. 697 in paragraphs 122 to 124 has held thus:-

"122. Article 30(1) of the Constitution does not confer an absolute right. The exercise of such right is subject to permissible State regulations with an eye on preventing maladministration. Broadly stated, there are "permissible regulations" and "impermissible regulations".

123. Some of the permissible regulations/restrictions governing enjoyment of Article 30(1) of the Constitution are:

(i) Guidelines for the efficiency and excellence of educational standards (**see Sidhajbhai v. State of Gujarat, State of Kerala v. Mother**

Provincial and All Saints High School v. Govt. of A.P.).

(ii) Regulations ensuring the security of the services of the teachers or other employees **(see Kerala Education Bill, 1957, Re and All Saints High School v. Govt. of A.P.).**

(iii) Introduction of an outside authority or controlling voice in the matter of service conditions of employees **(see All Saints High School v. Govt. of A.P.).**

(iv) Framing rules and regulations governing the conditions of service of teachers and employees and their pay and allowances **(see State of Kerala v. Mother Provincial and All Saints High School v. Govt. of A.P.).**

(v) Appointing a high official with authority and guidance to oversee that rules regarding conditions of service are not violated, but, however, such an authority should not be given blanket, uncanalised and arbitrary powers **(see All Saints High School v. Govt. of A.P.).**

(vi) Prescribing courses of study or syllabi or the nature of books **(see State of Kerala V. Mother Provincial and All Saints High School v. Govt. of A.P.).**

(vii) Regulation in the interest of efficiency of instruction, discipline, health, sanitation, morality, public order and the like **(see Sidhajbhai v. State of Gujarat).**

124. Subject to what has been stated in **T.M.A. Pai Foundation** some of the impermissible regulations are:

(i) Refusal to affiliation without sufficient reasons **(All Saints High School v. Govt. of A.P.).**

(ii) Such conditions as would completely destroy the autonomous administration of the educational institution **(All Saints High School v.**

Govt. of A.P.)

(iii) Introduction of an outside authority either directly or through its nominees in the Governing Body or the Managing Committee of minority institution to conduct the affairs of the institution (All Saints High School v. Govt. of A.P.)

(iv) Provision of an appeal or revision against an order of dismissal or removal by an aggrieved member of staff or provision for the Arbitral Tribunal (see Ahmedabad St. Xavier's College Society v. State of Gujarat, Lily Kurian v. Sr. Lewina and All Saints High School v. Govt. of A.P.). "

18. In the light of the Judgments of the Apex Court referred to above, the point for our consideration is whether Rule 86(2) which prescribes the rules regarding the recruitment of teachers is an "impermissible" regulation, which interferes with the right of the minority institutions to administer.

19. Undisputedly respondent No.1 has the requisite qualifications as prescribed by Rule 78. The respondent No.2 has not led any challenge to the validity of Rule 86 in its application to minority institutions. Such a challenge is raised for the first time in the oral arguments advanced on behalf of the respondents No.1 and 2. The Petitioner and the other respondents, in the

absence of a specific challenge to Rule 86, would certainly be prejudiced. We, however, propose to examine if Rule 86, in its application to minority institutions is contrary to the Guidelines laid down by the Apex Court in **T.M.A. Pai Foundation and Others etc. v. State of Karnataka and others** (Supra) and **Islamic Academy of Education and another v. State of Karnataka and others (Supra).**

20. Admittedly, the Respondent No.2 is an aided School, minority institution though. It is well settled that the right under Article 30(1) is not an absolute right and the Government is not prevented from making any regulations in the true interest of efficiency of instruction, discipline, health, sanitation, morality and public order. More so, Regulations can be framed governing minimum qualifications, experience and other service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff. If the Regulations so framed by the Government, destroys the minority character of the institution or affects or curtails the right of the minority to establish and administer the institution, the said regulations can be said to be contrary or in breach

of Article 30(1) of the Constitution. The Government has the right to make regulations which regulate the right under Article 30(1), if the regulations are for the benefit of the institutions as the vehicle of education, is consistent with national interest. The Apex Court in T.M.A. Pai Foundation and Others etc. v.State of Karnataka and others (Supra) at page 589 of the report, has held that in matters of day to day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the Management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the Management itself. The Apex Court has further observed that the State or other controlling authorities, however, can always prescribe the minimum qualifications, experience and other conditions bearing on the merit of an individual for being appointed as a Teacher or a Principal of any educational institution.

21. Applying the abovesaid principles enunciated by the Apex Court and upon a close reading of Rule 86(2), in our opinion, it does not indicate that it introduces any condition as would

completely destroy the autonomous administration of the minority institution. Whereas, Rule 86(2) is a provision relating to the service conditions of teaching staff for whom aid is provided for by the State. It is a regulatory measure which obligates the Management when filling up the post referred to in the said Rules to first explore the possibility of selecting seniormost teacher from the feeder category. It also provides that while making selection the management shall select the best qualified and most competent person among those available for selection/appointment to the post. The Rule further requires that the seniority shall be the first criteria subject to fitness and merit and in the event the claim of senior eligible teacher is by-passed, reasons therefor in writing should be recorded in the minutes by the the Promotion Committee. This Rule in no way interferes with the right of the Management to appoint a person of its choice, duly qualified, but all that this Rule requires is that the Management should consider the claim of the seniormost teacher and in the event the seniormost Teacher is to be by-passed, the same should be done by recording reasons for its justification. This Rule does not compel the Management to appoint only the seniormost teacher. This Rule also does not take

away the discretion of the Management in appointing a person other than a seniormost teacher. The rationale in this Rule is to ensure that an experienced, competent and deserving person from amongst the employees should be appointed to the post of Headmaster. In the event the Management finds that for sufficient reasons the claim of the seniormost teacher needs to be by-passed, the Management is free to appoint a person of its choice provided he has the requisite qualifications. The Supreme Court in St. John Teachers Training Institute (For Women) Madurai and others v. State of Tamil Nadu and Others, reported in 1993 (3) S.C.C., 595 has held that the Regulations should be with a view to promoting excellence of educational standards and ensuring security of the service of Teachers and other employees of the institutions and in the true interest of efficiency of institutions, discipline, health, sanitation, morality, public order and the like. The present Rule under consideration, by insisting that the Management should consider the claim of the seniormost teachers is also in keeping with the purpose of ensuring that the institutions are administered efficiently as the most efficient teacher, possessing the requisite qualifications, should be considered for appointment to the post of

Headmaster. This Rule cannot be read to mean that the right of the Management in appointing a Headmaster of its choice is completely taken away.

22. The Judgment of the Supreme Court in Board of Secondary Education and Teachers Training v. Jt. Director of Public Instructions, Sagar and others, (1998) 8 S.C.C. 555 does not assist the respondents 1 and 2as the Supreme Court in the said Judgment has held that any rules which take away the right of the Management to appoint a Principal of its choice amounts to interfering with the right guaranteed by Article 30 of the Constitution. In our considered opinion, Rule 86(2) does not take away the right of the Management to appoint a Headmaster of its choice. All that the Rule requires the Management to do is to explore the possibility of appointing the seniormost teacher.

23. In the light of what has been held by us above the Judgment of the Supreme Court in N. Ammad v. Manager, Emjay High School and others, (1998) 6 S.C.C., 674 also does not assist the respondents 1 and 2.

24. Reliance on behalf of the Petitioner has been placed on Rule 86A, which reads as under :-

> " 86 A. Transfer of services of employees:- If the services of an employee of a school are transferable to another school under the same management and if he is so transferred by the management, the employee shall be given the order of such transfer for his record, and
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> (a) the employee so transferred shall be entitled to such joining time and transfer allowances as are admissible to the corresponding employee in the Government schools.
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> Provided that no joining time or transfer allowance shall be admissible to the employee where the transfer is made at the request of the employee or the transfer is made to re-deploy surplus staff.
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> (b) any expenditure incurred by the school on transfer allowances, joining time, pay, etc. shall not be admissible for grants. "

According to the Petitioner, in view of this Rule, the respondent No.1 could not have been appointed on transfer from a school in Maharashtra to a school in Goa. Apparently what is contemplated by Rule 86A is the transfer of an employee from one school to another under the same management in the State of Goa. Rule 86A creates the procedure for transfer of the employees. The said Rule was brought on the statute book on 11.8.1994 i.e. after the respondent No.1 was

transferred. Thus the challenge under Rule 86A on behalf of the petitioner, according to us, does not merit any consideration. Obviously, Rule 86A would be applicable only to the institutions which are located in the State of Goa to whom the Act and the Rules apply. The Assistant Director of Education could not have therefore, by communication dated 21.1.91 at Exh.F, approved the transfer of the respondent No.1 from the school at Maharashtra to the institution at Goa.

25. After giving our anxious consideration to the rival submissions of the parties, in our opinion, the appointment of respondent no.1, which is made in breach of Rule 86, is illegal. The post of Headmaster is required to be filled by following the procedure set out in Rule 86. We, therefore, make the rule absolute in terms of prayer clause (a) and direct the respondent no. 2 to fill the post of Headmaster in Father Agnelo High School, Pilar, Goa, by following the procedure as set out in Rule 86. This exercise be carried out by the respondent no.2 preferably within a period of 4 months from today. Since the respondent no.1 has worked as the Headmaster, he shall be entitled to all the financial benefits of the post of Headmaster till such time and till the new

incumbent is appointed. On appointment of the new incumbent, the Respondent No.2 to forthwith repatriate the Respondent No.1 to his original post or such other appropriate post in the School run by the Respondent No.2 at Ambernath (Maharashtra) or in any other School in Maharashtra.

26. Rule made absolute in the above terms with no order as to costs.

(A.M. KHANWILKAR)
JUDGE.

(P.V. HARDAS)
JUDGE.

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